

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RYAN ROSS MCKENDRY-VERHUNCE,

Plaintiff,

v.

STEVE WOZNIAK, *et. al.*,

Defendants.

Case No. 3:22-CV-00524-ART-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

On November 28, 2022, Plaintiff Ryan Ross McKendry-Verhunce (“McKendry-Verhunce”), an inmate in the custody of the Nevada Department of Corrections (“NDOC”) submitted a civil rights complaint under 42 U.S.C. § 1983. (ECF No. 1-1). However, McKendry-Verhunce neither paid the full filing fee nor submitted an application to proceed *in forma pauperis*. Therefore, on November 28, 2022, the Court ordered McKendry-Verhunce to do so on or before January 12, 2023. (ECF No. 3). To date, McKendry-Verhunce has failed to do so.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring

¹ This Report and Recommendation is made to the Honorable Anne R. Traum, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 pro se plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
2 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
3 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
4 failure to comply with local rules).

5 In determining whether to dismiss an action for lack of prosecution, failure to obey
6 a court order, or failure to comply with local rules, the Court must consider several factors:
7 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
8 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
9 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
10 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
11 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

12 In the instant case, the Court finds that the first two factors, the public's interest in
13 expeditiously resolving this litigation and the Court's interest in managing the docket,
14 weigh in favor of dismissal. The third factor, risk of prejudice to defendants, also weighs
15 in favor of dismissal, since a presumption of injury arises from the occurrence of
16 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
17 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy
18 favoring disposition of cases on their merits—is greatly outweighed by the factors in favor
19 of dismissal discussed herein. Finally, a Court's warning to a party that his failure to obey
20 the Court's order will result in dismissal satisfies the "consideration of alternatives"
21 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
22 at 1424.

23 The Court's November 28, 2022 order expressly stated: "If McKendry-Verhunce is
24 unable to file a fully complete application to proceed *in forma pauperis* with all three
25 required documents or pay the full \$402 filing fee on or before January 12, 2023, this case
26 will be subject to dismissal without prejudice for McKendry-Verhunce to file a new case
27 with the Court when McKendry-Verhunce is either able to acquire all three of the
28 documents needed to file a fully complete application to proceed *in forma pauperis* or

1 pays the full \$402 filing fee.” (ECF No. 3.) Thus, McKendry-Verhunce had adequate
2 warning that dismissal would result from his noncompliance with the Court’s order.

3 Accordingly, it is recommended that this action be dismissed without prejudice
4 based on McKendry-Verhunce’s failure to pay the filing fee or file a fully complete
5 application to proceed *in forma pauperis* in compliance with this Court’s November 28,
6 2022 order (ECF No. 3).

7 The parties are advised:

8 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
9 Practice, the parties may file specific written objections to this Report and
10 Recommendation within fourteen days of receipt. These objections should be entitled
11 “Objections to Magistrate Judge’s Report and Recommendation” and should be
12 accompanied by points and authorities for consideration by the District Court.

13 2. This Report and Recommendation is not an appealable order and any
14 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
15 District Court’s judgment.

16 **I. RECOMMENDATION**

17 For the reasons stated above, **IT IS RECOMMENDED** that this action be
18 **DISMISSED** without prejudice; and,

19 **IT IS FURTHER RECOMMENDED** that the Clerk of Court **ENTER JUDGMENT**
20 accordingly.

21 **DATED:** January 17, 2023.

22 
23 **UNITED STATES MAGISTRATE JUDGE**